

**West Valley City
Agreement for Locker Replacement
at the Family Fitness Center**

THIS AGREEMENT is made this _____ day of _____, 20____, by and between West Valley City, a municipal corporation of the State of Utah (the “City”), and Rex W. Williams & Sons, Inc., a Utah corporation (“RWW”).

W I T N E S S E T H :

WHEREAS, the lockers at the Family Fitness Center need to be replaced; and

WHEREAS, the West Valley City Parks and Recreation Department publicly requested bids for the locker replacement; and

WHEREAS, RWW was the lowest bidder; and

WHEREAS, RWW has the knowledge, expertise, and desire to provide the City locker replacement services; and

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

A G R E E M E N T :

1. **RWW’s Obligations.** RWW agrees to perform the work necessary to remove and dispose of the old lockers as well as install the new lockers in accordance with the specifications attached hereto as Exhibit “A” and incorporated herein.
2. **City’s Obligations.**
 - a. **Consideration:** In consideration for the work performed by RWW, as set forth in section 1 above, the City agrees to pay RWW a fee not to exceed the sum of \$33,675.00. RWW shall provide the City with itemized billings of all services rendered in the performance of this Agreement. The City shall review and pay such billings within thirty (30) days of receipt of the itemized billings from RWW.
3. **Term of Agreement.** This Agreement shall commence upon execution by the parties, and shall continue for a period of not more than sixty (60) days, or until RWW completes the work set forth in this Agreement.

The City and RWW expect the locker replacement to be completed within sixty (60) days of the date of execution of this Agreement. However, the expected completion time may be extended by the City, at the City's sole discretion.

4. **Termination.**

- a. In the event RWW fails to comply with any provisions of this Agreement, or if the progress or quality of the work is unsatisfactory, the City may serve written notice thereof upon RWW, and if RWW fails within a period of three (3) days thereafter to correct failure, the City may terminate this Agreement upon written notice to RWW. Upon such termination, RWW shall immediately cease its performance of this Agreement and shall deliver to the City all completed or partially completed satisfactory work, and the City shall determine and pay to RWW the amount due for such satisfactory work.
- b. If RWW fails to fulfill its obligations under this Agreement in a timely and proper manner, or if it violates any of the terms of this Agreement, the City shall have the right to immediately terminate this Agreement, subject to the notice requirements of Subsection 4(a) above, and withhold payments in excess of fair compensation for work completed. The term breach of agreement specifically includes, but is not limited to, failure to comply with any applicable federal, state, or local laws or regulations. Notwithstanding the above, RWW shall not be relieved of liability to the City for damages sustained by virtue of any breach by RWW.
- c. In the event the City fails to substantially comply with the provisions of this Agreement, or if it fails to timely pay compensation due to RWW, RWW may serve written notice thereof upon the City, and, if the City fails within a period of three (3) working days thereafter to correct such failure, RWW may terminate this Agreement upon written notice to the City.

5. **City Representative.** The City hereby appoints the Parks and Recreation Director or his designee as the City's representative to assist in the administrative management of this Agreement, to ensure that the work to be performed by RWW is timely and adequately performed, and to provide for City approvals as may be required by this Agreement or the nature of the work. The City's representative shall assist in coordinating, monitoring, and evaluating this Agreement to completion. RWW understands and agrees that the City's representative shall have no control over the means, methods, techniques, or procedures employed by RWW, it being clearly understood that the City is interested only in the results obtained under this Agreement, with the manner and means of obtaining those results being under the sole control of RWW.

7. **Independent Contractor.** It is understood and agreed that RWW is an independent contractor, and that the officers and employees of RWW and its subcontractors shall not be employees, officers, or agents of the City; nor shall they represent themselves to be

City employees; nor shall they be entitled, as a result of the execution of this Agreement, to any benefits or protections that would otherwise be available to City employees.

8. **Conflict of Interest.** RWW warrants that no City employee, official, or agent has been retained by RWW to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of RWW, or to receive a commission, percentage, brokerage, contingent fee, or any other form of compensation.
9. **Indemnification.** To the fullest extent permitted by law, RWW agrees to indemnify, defend, and hold the City harmless from and against any and all lawsuits, damages, and expenses, including court costs and attorney's fees, by reason of any claim and/or liability imposed, claimed, and/or threatened against the City for damages because of bodily injury, death, and/or property damages arising out of, or in consequence of, the performance of services under this Agreement, to the extent that such bodily injuries, death, and/or property damages are attributable to the negligence of RWW and/or RWW's subcontractors, servants, agents, employees, and/or assigns. As used in this section, the City shall also refer to the officers, agents, assigns, volunteers, and employees of the City. The indemnification required by this section shall not apply to any bodily injuries, death, and/or property damages that are attributable to the sole negligence of the City.
10. **Insurance Requirements.** RWW shall obtain and pay for Workers' Compensation and Employers' Liability Insurance, which shall meet the statutory limits mandated by law. In addition, RWW shall obtain and pay for the following insurance coverage: (i) commercial general liability insurance up to \$2,000,000.00 per occurrence (ii) bodily injury insurance up to \$2,000,000.00 per occurrence (iii) broad form property damage insurance (including coverage for explosion, collapse and underground hazards) up to \$2,000,000.00 per occurrence. RWW shall also obtain and pay for automobile liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage, which shall be maintained with a minimum limit of liability per occurrence of \$2,000,000.00. RWW shall furnish to West Valley City certificates of insurance indicating that such coverage is in effect, and shall name West Valley City and its employees, officials and agents as an additional insured.
11. **Subcontract Assignment.** Neither party shall assign any rights or interest herein without prior written consent of the other party.
12. **Attorney's Fees.** In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

13. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties.
14. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid
15. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all of the parties hereto.
16. **Applicable Law.** This Agreement shall be governed by the laws of the State of Utah.
17. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Company: Rex W. Williams & Sons, Inc.
Attn: Joe Williams
70 West Alexander Street
P.O. Box 26055
Salt Lake City, UT 84126
Phone: (801) 972-6611

If to the City: West Valley City Parks and Recreation Department
Attn: Kevin Astill
Nancy Day
3600 Constitution Boulevard
West Valley City, Utah 84119
Phone: (801) 955-4009

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

WEST VALLEY CITY

Mayor

ATTEST:

City Recorder

Rex W. Williams & Sons, Inc.

By: _____
Title: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this _____ day of _____, 2010, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the _____ [title] of Rex W. Williams & Sons, Inc., and said document was signed by him in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public

Exhibit “A”

Labor

Removal of existing lockers and wood furring strips.....\$780.00

Installation of new lockers and associated trim.....\$1,480.00

New Lockers

39 12” X 15” X 72” high two tier locker columns in the Men’s Locker Room

39 12” X 15” X 72” high two tier locker columns in the Women’s Locker Room

30 12” X 15” X 72” high two tier locker columns by the Family Changing Rooms

Integral flat tops

4 ea. Finished ends

6 ea. Top and front fillers

Solid color plastic that extends the thickness of the locker such that scratching will not affect the finish

Fully assembled

Number plates included

Coat Hooks included

Full delivery

Water-resistant, rust-resistant, impervious to moisture

Durable: no denting or warping

Zero absorption rate

Vandal resistant covered lock latch

ADA compliant operation

ALL LOCKER PARTS AND COMPONENTS HAVE A 20 YEAR WARRANTY AGAINST RUST, CORROSION, DENTING AND DELAMINATING UNDER NORMAL USE.